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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

Before the  
**Federal Communications Commission**  
Washington, D.C. 20554

In the Matter of )

)  
Rulemaking to Amend Parts 1, 2, 21, and 25 )  
of the Commission's Rules to Redesignate the )  
27.5 - 29.5 GHz Frequency Band, to Reallocate )  
the 29.5 - 30.0 GHz Frequency Band, to )  
Establish Rules and Policies for Local )  
Multipoint Distribution Service and for Fixed )  
Satellite Services )

CC Docket No. 92-297

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To: The Commission

**REPLY COMMENTS OF BELL SOUTH**

BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Enterprises, Inc. (collectively "BellSouth") hereby reply to the comments submitted in response to the Commission's *Third Notice of Proposed Rulemaking and Supplemental Tentative Decision*, FCC 95-287 (released July 28, 1995) ("Notice") in this proceeding.<sup>1</sup> The Commission's Notice sought comment on a plan to allow Local Multipoint Distribution Service ("LMDS") systems, Fixed Satellite Service ("FSS") systems, and Mobile Satellite Service ("MSS") system feeder links to operate in the 27.5 - 29.5 GHz (28 GHz) frequency band.

In its comments, BellSouth generally supported the Commission's efforts to open the 28 GHz band to enable LMDS providers to combine such traditionally separate services as telephony, video

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<sup>1</sup> On September 25, 1995 the Chief of the International Bureau released an *Order* in this proceeding extending the period of time within which to file reply comments until October 10, 1995. See *Order*, DA 95-2033 (released Sept. 25, 1995).

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services, data transfers and interactive transactions, and BellSouth reaffirms herein the positions taken in its comments. In particular, BellSouth reiterates that there should be open eligibility for LMDS licenses and reasserts its support for the Commission's proposal to allow successful LMDS bidders to specify the type of service to be offered and their applicable regulatory status. In these reply comments, BellSouth focuses upon the threshold eligibility and regulatory issues surrounding the provision of LMDS.

## DISCUSSION

### A. Eligibility

The Commission's *Notice* sought additional comment on its original proposal not to adopt restrictions on the ownership of LMDS licenses. *Notice* at ¶ 97. In its comments, BellSouth submitted that there should be open eligibility for LMDS licenses and that no class of potential provider should be excluded.<sup>2</sup> Specifically, BellSouth noted that LMDS will be competing in a multichannel video programming distribution ("MVPD") market which includes, *inter alia*, cable operators, Direct Broadcast Satellite ("DBS") providers, wireless cable systems, satellite master antenna television systems and video dialtone systems. *Id.* at ¶ 77. Accordingly, because of the broad but as yet uncertain types of services which may be offered under the umbrella of LMDS in the 28 GHz band, BellSouth asserted that the Commission should not exclude any potential class of provider from the ownership of LMDS licenses.<sup>3</sup>

Bell Atlantic in its comments concurs that there is no policy reason to impose restrictions on the ownership of LMDS licenses.<sup>4</sup> BellSouth supports the comments of Bell Atlantic that the

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<sup>2</sup> BellSouth Comments at 9.

<sup>3</sup> BellSouth Comments at 9.

<sup>4</sup> *See generally* Bell Atlantic Comments at 6.

relevant market for LMDS “includes competitors using a wide variety of technologies, such as traditional cable television systems, [DBS] systems, Multipoint Multichannel Distribution Service (MMDS), and satellite master antenna systems.”<sup>5</sup> Because this market is already competitive, BellSouth agrees that “it is inconceivable that any single entity could gain control of all these technologies and monopolize the [MVPD] market.”<sup>6</sup> The entry of BellSouth and other Local Exchange Carriers (“LECs”) into this already competitive market will only expand the variety of competing service providers, and it therefore would be nonsensical to exclude LECs from the provision of LMDS services.

Nevertheless, Entertainment Made Convenient International, Inc. (“Emc<sup>3</sup>”) states in its comments that “[b]ecause of their dominant position in the local market, it would be anti-competitive to allow LECs and cable TV operators to hold LMDS licenses within their service areas” and that “they would be able to stifle the introduction of competition.”<sup>7</sup> From a competitive standpoint, however, LECs do not possess monopoly power with regard to LMDS and would have no bottleneck power through the provision of LMDS. As noted, the Commission has stated that LMDS will be competing in an MVPD market which is populated today with a variety of competitors, including cable operators, DBS providers, wireless cable systems, satellite master antenna television systems and video dialtone systems, *see Notice* at ¶ 77, but *not* LECs. This market is already competitive, and LEC participation would only significantly *increase* competition, not stifle it.

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<sup>5</sup> Bell Atlantic Comments at 6.

<sup>6</sup> Bell Atlantic Comments at 6.

<sup>7</sup> Emc<sup>3</sup> Comments at 7-8.

With regard to LMDS participation by small businesses, M3 Illinois Telecommunications Corporation ("M3ITC") suggests that existing cable operators, telephone companies and MMDS operators should be restricted from obtaining an LMDS license in order to favor small businesses.<sup>8</sup> BellSouth disagrees with M3ITC and submits that the Commission should maintain open eligibility and decline to impose eligibility restrictions upon the provision of LMDS, as discussed below.

Unlike the markets for the Cellular Radiotelephone Service and the Personal Communications Service ("PCS"), which require the use of mobile radio technologies and equipment as a necessary condition to enter and boost competition, the relevant market defined above in which LMDS will compete does not require or currently even include mobile technology.<sup>9</sup> Thus, fiber, coax, and other radio services, such as Multipoint Distribution Service ("MDS"), can facilitate market entry and provide additional competition within the market. Without the technology limitations of cellular and PCS, there is no reason to exclude the most experienced and financially capable companies, such as LECs and cable television companies, from obtaining LMDS licenses just to foster market entry by smaller companies, which may be less capable of deploying a high-quality network. Rather, small companies can use fiber, coax or MDS to enter the market if they are unable to win a bid for an LMDS license at auction.

In addition, BellSouth has determined that in order to build out a Basic Trading Area ("BTA"), a large capital investment will be required, which small companies may find difficult to obtain. Limiting LMDS eligibility by excluding those parties having the necessary resources to develop and build an LMDS system may restrict spectrum value and jeopardize the successful and timely deployment of LMDS services.

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<sup>8</sup> M3ITC Comments at ¶¶ 8-13, 25-26.

<sup>9</sup> LMDS technology does not rely on the existing wireline or cable television networks and is, therefore, not restricted by any existing network "bottleneck."

M3ITC also states that allowing the telephone companies to own a second delivery system, presumably through LMDS, that might otherwise provide competition to its telecommunications and video dialtone services “would not be in the best interests of the public.”<sup>10</sup> M3ITC seems to be arguing for the exclusion of LECs, CATV operators, and MMDS providers from the provision of LMDS. M3ITC ignores, however, the fact that telephony will only be a secondary use of LMDS. Further, it does not make sense from a financial standpoint for a LEC to invest in the expensive infrastructure required to build a 1,000 MHz LMDS system simply to limit competition to its telephony services. *Any* company, including a LEC, who invests in an LMDS infrastructure will be financially driven to compete to recover its investment primarily through video services but also, on a secondary basis, through telephony and data services.

For the aforementioned reasons, the Commission should establish an open eligibility policy for LMDS. The relevant markets in which LMDS will compete are already competitive. Moreover, competition in the telephony and cable television markets is growing daily and the Commission anticipates LMDS providers may combine these traditionally separate services to further enhance competition. *See Notice* at ¶¶ 27-28. In addition, the FCC is currently considering the future auctioning of Digital-TV spectrum, which will provide additional competitive video outlets.<sup>11</sup> This and other spectrum auctions and technological advancements will continue to create new competition to LMDS. Thus, the rationale for excluding experienced players from the provision of LMDS is further diminished. LMDS eligibility exclusions could also set an unnecessary precedent for future Commission auctions moving the Commission further away, and not closer to, its goal of minimizing regulation and maximizing competition.

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<sup>10</sup> M3ITC Comments at ¶ 11(b).

<sup>11</sup> *See Advanced Television Systems*, MM Docket No. 87-268, *Fourth Further Notice of Proposed Rule Making and Third Notice of Inquiry*, FCC 95-315 at ¶ 31 (released Aug. 9, 1995).

## **B. LMDS Services and Regulation**

The Commission's *Notice* proposed three different alternatives for regulating LMDS licensees. *Notice* at ¶¶ 94-96. In its comments, BellSouth supported the Commission's second proposal to allow successful LMDS bidders to specify the type of service to be offered and their applicable regulatory status. *See id.* at ¶ 95.<sup>12</sup> Under either of the Commission's other proposals, a Title II environment would be presumed without further analysis of a particular use. *See id.* at ¶¶ 94, 96. BellSouth continues to believe that because the development of LMDS services and technologies is still in its infancy, the Commission should not prejudge the regulatory status of the services that have yet to evolve. Accordingly, BellSouth agrees with the comments of Ameritech that "[g]iven the early level of LMDS' current technical development, and the uncertainty regarding the services which may ultimately be offered using LMDS as a delivery technology, it would be premature to force the nascent industry into a regulatory 'pigeonhole.'"<sup>13</sup>

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<sup>12</sup> *See also* BellSouth Comments at 8.

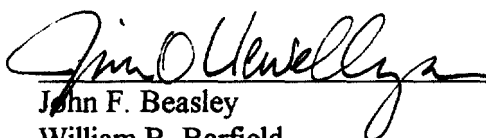
<sup>13</sup> Ameritech Comments at 5.


## CONCLUSION

For the foregoing reasons, BellSouth urges the Commission to adopt the policies and rules governing LMDS as set forth in its comments and restated above.

Respectfully submitted,

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October 10, 1995

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I, Phyllis F. Martin, do hereby certify that I have, on this 10th day of October, 1995, served by first class mail, postage prepaid, a copy of the foregoing Reply Comments Of BellSouth to the following:

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